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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13
14 Plaintiff,
15 v.
16 Abdul Malik Abdul Kareem,
17 Defendant.
18

No. CR-15-00707-01-PHX-SRB

**RESPONSE TO DEFENDANT'S MOTION
TO PRECLUDE GOVERNMENT *EX*
*PART*E SUBMISSION UNDER CIPA
ABSENT DEFENSE PARTICIPATION**

19 The United States, through undersigned counsel, respectfully urges the Court to
20 deny Kareem's Supplemental Motion to Preclude Government *Ex Parte* Submission Under
21 CIPA Absent Defense Participation (CR 522). The government respectfully submits the
22 motion is moot because the government does not anticipate any filings under the Classified
23 Information Procedures Act (CIPA) at this time. In light of the instant motion, however,
24 should undersigned counsel come to anticipate a new CIPA filing is in this case,
25 undersigned counsel will provide general notice to the defense in advance of such a filing
26 in order to enable the defense to file a renewed motion.

27 Further, although the government would agree that a defense *ex parte* presentation
28 to the Court on anticipated defenses may be appropriate in some circumstances prior to

1 trial, the instant motion addresses post-trial discovery requests and litigation. The
2 defendant has revealed, both at trial and in post-trial filings and letters, the defenses to
3 which their discovery demands relate. *See* CR 524, Exh. 1. Any additional justifications
4 for deeming information relevant and helpful under Rule 16, exculpatory under *Brady v.*
5 *Maryland*, 373 U.S. 83 (1963), or impeachment evidence under *Giglio v. United States*,
6 405 U.S. 150 (1972), should be provided to government counsel and not submitted *ex*
7 *parte*. Further, the government respectfully suggests the defense should supply authority
8 articulating the precise legal basis for the claimed defense theory.

9 Respectfully submitted this 11th day of February, 2019.

10 ELIZABETH A. STRANGE
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12 *s/ Kristen Brook*
13 *s/ Joseph E. Koehler*
14 KRISTEN BROOK
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20 CERTIFICATE OF SERVICE

21 I hereby certify that on the 11th day of February, 2019, I electronically filed the
22 foregoing with the Clerk of Court using the CM/ECF system, and that true and accurate
copies have been transmitted electronically to counsel for the defendant via the ECF
system.

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24 Daniel Drake & Daniel Maynard, Attorneys for Defendant

25 By: */s Joseph E. Koehler*
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